165-538

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DEC 14 1896
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165-538.

Supreme Court of the United States.

Original No. 8.

EX PARTE SAMUEL J. McCAULLY.

SAMUEL J. McCAULLY, *Petitioner.*

JEREMIAH M. WILSON,
HENRY E. DAVIS,
Attorneys for the Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

Original No. —.

EX PARTE SAMUEL J. McCAULLY.

To the Honorable the
Supreme Court of the United States:

The petition of Samuel J. McCaully respectfully represents as follows:

1. He is a citizen of the United States and a resident of the District of Columbia, and is now unlawfully restrained of his liberty by the marshal of the United States in and for the District of Columbia, to wit, Albert A. Wilson.

2. The facts concerning the said unlawful detention of the petitioner and the claim of authority under and by virtue of which he is detained are as follows: Heretofore, to wit, on the 22d day of April, A. D. 1890, in the supreme court of the District of Columbia, holding a criminal term, there was filed against the petitioner an indictment purporting to be based upon an act of the Congress of the United States approved the 2d day of August, A. D. 1886, commonly known as the "Oleomargarine law," for alleged violation of certain of the provisions of the said law. Afterwards, to wit, on the 23d day of June, A. D. 1896, the petitioner was ordered to plead and did plead not guilty to the said

indictment and was thereupon tried and convicted upon the said indictment; and upon such conviction the petitioner was sentenced by the said court to pay a fine of five hundred dollars and the costs of prosecution, amounting to $28.50, and in default of payment of said fine and costs to stand committed further until paid; and the petitioner was thereupon, on, to wit, the 14th day of December, A. D. 1896, committed to the custody of the said marshal of the United States in and for the District of Columbia under the said judgment and sentence, and said marshal took the petitioner into his custody and deprives him of his liberty by virtue thereof.

3. The said confinement and imprisonment of the petitioner and the said deprivation of his liberty as aforesaid are unlawful and without authority and are made and now continue in violation of the Constitution and laws of the United States for the following, among other, reasons: The act under which said indictment is found is contrary to the Constitution of the United States in this, among other things, that it is not within the power of the Congress of the United States under the Constitution of the United States to delegate to the Commissioner of Internal Revenue or the Secretary of the Treasury of the United States or any other person power to determine what acts shall be criminal; and the said act of Congress aforesaid does not sufficiently define or define at all what acts done or omitted to be done within the supposed purview of the said act shall constitute an offense or offenses against the United States.

Wherefore the petitioner prays that the writ of *habeas corpus* may issue from this court, directed to the said Albert A. Wilson, marshal as aforesaid, commanding him to produce the petitioner before this court, together with the cause of his detention; and also, if need be, that a writ of certiorari be directed to the clerk of the said supreme court of the District of Columbia requiring him to bring into this

court a full, complete, and duly certified copy of the record of the entire proceedings against the petitioner in the premises, and that pending this petition and upon the hearing thereof this court will, by such order in the premises as may be deemed proper, admit the petitioner to bail.

SAMUEL J. MCCAULLY, *Petitioner.*

JEREMIAH M. WILSON,
HENRY E. DAVIS,
Attorneys for the Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Before me, a notary public in and for the District aforesaid, personally appeared Samuel J. McCaully, who, being by me first duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the facts in the said petition stated and set forth are true.

SAMUEL J. MCCAULLY.

Subscribed and sworn to before me this 14th day of December, A. D. 1896.

[SEAL.] MASON N. RICHARDSON,
Notary Public.